IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 286 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNGJIBHAI GANDABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR BJ JADEJA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8,1.2.9 MR HM JADEJA for Petitioner(s) : 1, 1.2.1, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8,1.2.9
M/S PATEL ADVOCATES for Respondent(s) : 1,
None for Respondent(s) : 2 – 3.

MR SATYAM CHHAYA, AGP for State Authorities

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/02/2007

ORAL JUDGMENT

1. The short facts of the case are that deceased

Gandabhai Kuvarbhai was holding the agricultural land at Village Bhatharia. The form was filed by him under Gujarat Agricultural Lands Ceiling Act (hereinafter referred to as “the Act”). There were earlier litigations and ultimately the matter was remanded to the Mamlatdar for reconsideration on the aspects as to whether the other sons who are staying separately would be entitled to the benefits of the provisions of Section 6(3B) of the Act or not. The Mamlatdar and ALT once again considered the matter after remand and vide order dated 3rd October, 1981, Mamlatdar declared that it is not proved that any son was major, who was in the family of Gandabhai Kuvarbhai and other two sons were staying separately and, therefore, it was declared that the applicants would be entitled to hold 54 acres of land and the lands bearing Survey No.106 and 146, admeasuring 19 acres and 05 gunthas were declared as surplus land. It appears that the deceased Gandabhai Kuvarbhai carried the matter in appeal before the Dy. Collector being No.2/1985-86 and the said appeal

ultimately came to be dismissed as per the order dated 18.8.1993, wherein the Dy. Collector fund that two major sons are staying separately and as per the declaration filed by the holder of the land, they cannot be treated as the part of the family and, therefore, not entitled to the benefits of Section 6(3B) of the Act. The deceased Gandabhai Kuvarbhai further carried the matter before the Tribunal in revision being No.869 of 1993. The Tribunal found that even if the total strength of the members of the family is considered and even if it is considered that the majority of the said son Jugabhai Gandabhai was not proved, the holder would be entitled to get more land of 1/5th unit and the Tribunal further observed that if any land is purchased after 1.4.1976, the same cannot be considered and, therefore, the Tribunal allowed the revision by setting aside the orders of both the authorities and directed the Mamlatdar to pass a fresh order as per the observations made in the judgement. It is under these circumstances the present petition.

2. I have heard Mr.H.M.Jadeja for Mr.B.J.Jadeja, learned Counsel for the petitioner and Mr.Chhaya, learned AGP for the State Authorities.

3. Mr.Jadeja, learned Counsel appearing for the petitioner, contended inter alia that even if it is considered that Jugabhai Gandabhai was not major son on 1.4.1976, two other sons of the petitioner namely; Sukhjibhai Gandabhai and Gidhabhai Gandabhai were major and, therefore, it was required for the Tribunal to include them in the family or separate units for both the sons were required to be given. He, submitted that the Tribunal has not considered the said aspect while exercising the revisional power and, therefore, this Court may consider the matter.

4. Mr.Chhaya, learned AGP has supported the order passed by the Tribunal.

5. It deserves to be recorded that the original holder of the land Gandabhai Kuvarbhai did not disclose in the declaration filed by him under Section 10 that the property was held by him as

the property of the joint family. Therefore, if the Mamlatdar has proceeded on the basis that the property was held by Gandabhai Kuvarbhai in his individual capacity, after appreciation of evidence on record, it cannot be said that a notional partition was required for permitting separate units of each major sons for the purpose of computation. The reference may be made to the decision of this Court in case of **Savjibhai Mohanbhai Patel v. State of Gujarat and Ors.", reported in 1992(1) GLH, U.J. 14**, wherein the view taken is that if it is not declared as that of joint family property under Section 10, the benefits under Section 6(3C) would not be available. Therefore, the said contention of Mr.Jadeja cannot be accepted.

6. The contention raised on behalf of the petitioner that at least the said two sons were required to be included in the family for the purpose of giving additional unit, if considered, it appears that as per the provisions of Section 6(3B), where the family or a joint family consist of more than five members

comprising of a person and other members belonging to all or any of the categories of minor son, widow of a pre-deceased son, minor son or un-married daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, subject to however that the total holding of the family does not exceed twice the ceiling area. The proviso of Sub-Section (3B) of Section 6 provides that if any land is held also by any member of such family separately, such lands shall be grouped together with the land to such family for the purpose of determining the total holding of the family. Therefore, separate land held by any member of the family is to be added in the holding of such person, who is main member of the family and such other holder is also to be treated as included in the family. The perusal of the order passed by the Mamlatdar dated 3.10.1981 shows that in the deposition it transpired that

the property held by Jugabhai Gandabhai admeasuring 14 acres and 16 gunthas is recorded as having purchased from the fund of the family derived from the income of the father and also two major sons of Gandabhai Kuvarbhai namely; Gidhabhai Gandabhai and Sukhajibhai Gandabhai. If the said property is treated as that of the joint family, then in that case, two major sons namely; Gidhabhai Gandabhai and Sukhjibhai Gandabhai would be entitled to have their share separately and only two portions namely; the shares of Gandabhai Kuvarbhai and Jugabhai Gandabhai can be treated as the land held by the family of Gandabhai Kuvarbhai and the reason being that Gidhabhai Gandabhai and Sukhjibhai Gandabhai were found as outside the family of the Gandabhai Kuvarbhai. If such aspect is considered, then instead of adding the land admeasuring 16 acres and 11 gunthas, the holding, which can be added would be only 8 acres and 5½ gunthas from the holding of Jugabhai Gandabhai for his share as well as for the share of his father Gandabhai Kuvarbhai and

consequently the land admeasuring 8 acres and 5½ gunthas was required to be excluded for the purpose of holding. At least so far as the share of other major sons, who are excluded from the computation of the definition of family namely; Gidhabhai Gandabhai and Sukhajibhai Gandabhai the same could not have been included.

7. The aforesaid aspect appears to have been not considered by the Tribunal for exercising the revisional power and, therefore, it can be said that the Tribunal has committed jurisdictional error to that extent.

8. So far as the other observation made by the Tribunal in the impugned order for entitlement of 1/5th of the unit more under Section 6 (3B) of the Act on the basis that there are seven members in the family and consequently the additional area of 10 acres and 32 gunthas appears to be in accordance with law and the finding of the Tribunal to that extent does not deserve to be disturbed.

9. In view of the aforesaid observations and discussions, it appears that the total holding

of deceased Gandabhai Kuvarbhai will be reduced to 8 acres and 5½ gunthas. Therefore, if 8 ares and 5½ gunthas is deducted from the total holding, the holding would be reduced to 65 acres and as found by the Tribunal after calculating the additional 1/5th unit, the permissible holding is calculated as that of 64 acres and 32 gunthas and, therefore, consequently only 0 aces and 8 gunthas of the land will be required to be declared as surplus land.

10. As the Tribunal has even otherwise remanded the matter to the Mamlatdar and ALT, it would be required for the Mamaltdar and ALT to pass a formal order for declaration of the surplus land held by Gandabhai Kuvarbhai after taking into consideration the observations made by the Tribunal read with the judgement of this Court so far as it relates to the holding to the extent of 0 acres and 08 gunthas to be declared as excess land.

11. In the result, the impugned order passed by the Tribunal so far as it relates to permitting the

additional 1/5th unit of the land admeasuring 10 ares 32 gunthas is not disturbed, but it is further directed that the total holding of the deceased Gandabhai Kuvarbhai shall be reduced by 8 acres and 5½ gunthas and, therefore, the net holding would be 65 acres of Gandabhai Kuvarbhai. Consequently out of the total holding of 65 acres, if permissible holding of 64 acres and 32 gunthas are excluded, the net land, which may be required to be declared as excess would be 0 acres and 8 gunthas. The Mamlatdar shall pass the order for compliance to the order passed by the Tribunal read with the present judgement, preferably within a period of three months from the date of receipt of the order of this Court.

12. The petition is partly allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

1.2.2007 **(Jayant Patel, J.)**

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